

**U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID)
CLASS JUSTIFICATION AND APPROVAL (J&A) FOR OTHER
THAN FULL AND OPEN COMPETITION COVERING:
1)PERSONAL SERVICES CONTRACTS (PSCs) WITH:
RESIDENT HIRE U.S.PSCs, CCN/ TCN PSCs SUBJECT
TO THE LOCAL COMPENSATION PLAN AND:
2)OVERSEAS CONTRACTS OF \$250,000 OR LESS.**

This document is a class justification and approval for other than full and open competition for certain categories of personal services contracts issued under the authorities of (48 CFR Chapter 7) AIDAR 706.302-70 (b)(1) and for overseas contracts for local purchases of \$250,000 or less issued under the authority of (48 CFR) AIDAR 706.302-70(b)(2).

This class J&A may be used in accordance with its terms by USAID contracting officers acting within the scope of their delegated authority. When using this class J&A, contracting officers must ensure that each contract action executed pursuant to the authority of this class J&A is within the scope of the class J&A and that the appropriate requirements for competition in Section II, Conditions for Use of this class J&A are followed. This class justification must not be used if only one source was considered, except for extensions or renewals with Resident Hire USPSCs and CCN and TCN PSCs subject to the Local Compensation Plan.

SECTION 1. FACTS AND RATIONALE
(as required by (48 CFR) FAR 6.303-2)

(1) Identification of the agency and the contracting activity, and specific identification of the document as a “Justification for Other than Full and Open Competition.”

This document sets forth the facts and rationale justifying USAID’s use of other than full and open competition, in accordance with AIDAR 706.302-70(b)(1) and 706.302-70(b)(2). This document was prepared by M/OAA/P in conjunction with proposed revisions to AIDAR 706.302-70 and AIDAR Appendices D and J.

(2) The nature and/or description of the action being approved:

This class J&A may be used to satisfy the requirements of AIDAR 706.302-70(c)(2) regarding preparation of a Justification and Approval (J&A) pursuant to FAR 6.303. It applies only to the types of procurements specified below.

- 1) For the following types of Personal Services Contracts (PSCs) as authorized by 40 U.S.C. 113 and stated in AIDAR 706.302-70(b)(1):

- a) Resident Hire U.S. Personal Services Contracts (USPSCs), as defined in AIDAR Appendix D; and
 - b) Cooperating Country National (CCN) and Third Country National (TCN) personal services contracts (PSCs), subject to the local compensation plan, as defined in AIDAR Appendix J;
- 2) For local purchases of \$250,000 or less, awarded by an overseas contracting activity pursuant to AIDAR 706.302-70(b)(2).

This class J&A may be used only when all of the conditions in Section II of this document are met.

(3) Description of the supplies or services required, including an estimated value:

The Agency contracts for Resident Hire USPSCs to obtain the needed skills not available in the cooperating country, help with workload, cover agency needs for activities of limited duration or respond to natural disasters. In FY 2015, about ten percent of the approximately 400 USPSC awards executed by the Agency for services abroad were Resident Hires.

In FY 2015 the Agency's Cooperating Country National (CCN) ¹workforce consisted of close to 6,000 individuals. The agency obligated over \$200 million to cover salaries, benefits and other expenses associated with the CCN workforce. Historically USAID recruited Foreign Service National (FSN) direct-hire employees to perform vital mission program and support functions at USAID missions worldwide. In the early 1980s, the agency converted from hiring FSN direct-hire employees to executing personal services contracts with cooperating country nationals (CCNs) to continue providing much-needed in-country support and expertise.

For local purchases of up to \$250,000, USAID missions obligate approximately \$45 million annually in approximately 3,000 procurement transactions to obtain goods and services locally under purchase orders and contracts.

(4) An identification of the statutory authority permitting other than full and open competition.

Statutory authority permitting other than full and open competition under this class J&A is 40 U.S.C 113(e)(2), as stated in AIDAR 706.302-70(a).

(5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition that requires use of the authority cited:

¹ For the purpose of this class J&A, the term CCNs also includes TCNs subject to the local compensation plan.

Under the authorities of 40 U.S.C 113, the Administrator of USAID made a written determination that following the requirements of full and open competition for awards specified in AIDAR 706.302-70 (b)(1) and (2) would impair implementation of USAID foreign assistance objectives. Further, to relieve contracting officers of the considerable administrative burden in preparing separate justifications for certain contract actions excluded from full and open competition requirements under the AIDAR 706.302-70 (b)(1) and 706.302-70(b)(2), the Senior Procurement Executive signed a class Justification for other than full and open competition, which was issued in CIB 97-16 on July 10, 1997. This document is a revised class J&A that conforms to the requirements in the FAR Section 6.303-2 and supersedes the class J&A dated July 10, 1997. This class J&A can only be used for certain categories of awards (specified in #2 above) issued under the authorities in AIDAR 706.302-70(b)(1) and 706.302-70(b)(2).

This class J&A must not be used when only one source is considered, except for extensions or renewals with CCNs and TCNs subject to the Local Compensation Plan, and Resident Hire USPSCs.

- (6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by FAR subpart 5.2 and, if not, which exception under FAR 5.202 or AIDAR 705.202 applies.**

Under (48 CFR) AIDAR 705.202(b), the head of the U.S. Agency for International Development has determined after consultation with the Administrator for the Office of Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice of contract action is not appropriate or reasonable for contract actions described in 706.302-70(b)(1) through (b)(3). Accordingly, awards meeting these descriptions need not be synopsisized. Additionally, the Senior Procurement Executive has made a written determination in accordance with FAR 5.102(a)(5)(iii) that contracting officers do not need to publicize in the GPE (FedBiz Opps) solicitations for the categories of awards covered by this class justification.

To ensure that procurements falling under the scope of this class J&A are solicited from as many potential sources as is practicable, Section II, Conditions for Use, establishes minimum solicitation requirements that must be met for contracts awarded using this class J&A. For PSCs specifically, solicitations must be publicized locally consistent with Mission/Embassy practice. For Resident-hire USPSCs, if the position is not publicized locally, the contracting officer must contact at least three (3) individuals, including any person who may have expressed an interest in the position.

This class J&A will not be used when only one source is considered, except in the case of follow-on extensions or renewals with Resident Hire U.S.PSCs or CCN and TCN PSCs subject to the Local Compensation Plan.

Additionally, this class J&A will be posted on FedBizOpps to comply with the requirement in (48 CFR) FAR 6.305 to make publicly available justifications for other than full and open competition.

(7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable:

A determination that the cost to the government is fair and reasonable will be made by the contracting officer and documented in the file prior to award of individual contracts executed using this class J&A. See Section II of this document for the conditions of use for this class J&A.

(8) Description of the market research conducted, and the results or a statement of the reasons market research was not conducted:

Market research was not conducted when preparing this class J&A, given the variety of services and supplies that will be procured under the authorities specified in this justification. Market research will be conducted and documented in the award file by the contracting officer for each procurement awarded using this class J&A. See section II of this document for the conditions of use for this class J&A.

(9) Other facts supporting the use of other than full and open competition:

No other factors are necessary or available to support the use of other than full and open competition, as this class J&A is based on the authorities in AIDAR 706.302-70(b) on Impairment of Foreign Aid Programs and 40 USC 113(e)(2).

(10) Sources, if any, that expressed an interest, in writing, in the acquisition:

As individual purchases made under this class J&A have not been synopsisized, no source list is available. However, as required in AIDAR 706.302-70(c), the contracting officer must ensure that offers have been solicited from as many potential offerors as is practicable under the circumstances. In the event that any potential applicant/offeror expresses an interest in an acquisition in writing, the contracting officer must take this information into consideration in the source selection process and document the file accordingly.

(11) The actions the Agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required:

USAID will comply with full and open competition procedures to the extent possible provided doing so will not impair the foreign assistance programs, as authorized in AIDAR 706.302-70. However, the use of this class J&A is not mandated for all applicable awards. Contracting officers, at their discretion, may fully compete a

personal services contract, renewal or extension, when in the contracting officer's judgment the needs of the Agency would be best served by full and open competition.

Additionally, when awards are made using this class J&A, competition is limited to local sources as the requirements are for local personnel or for relatively small value supplies or services, where competition in the U.S. is not practical. The Agency promotes advertising locally to obtain as many applications/offers as practicable.

(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

Contracting officers must ensure compliance with all conditions in Section II below, including appropriate file documentation and contracting officer certification, as specified in Section II.B below.

SECTION II. CONDITIONS FOR USE

For each procurement awarded under this class J&A, the contracting officer must ensure that the conditions specified below are met.

(1) Soliciting Limited Sources:

In accordance with AIDAR 706.302-70(c), the contracting officer must ensure that for each award, offers have been solicited from as many potential offerors as is practicable under the circumstances.

A. Resident Hire USPSCs.

For new awards, to satisfy the requirement of soliciting from as many potential offerors as is practicable, COs must --

- Publicize the solicitation locally consistent with Mission/Embassy practice on the announcement of locally-hired U.S. citizen positions; or
- When publicizing locally is not practicable, consider at least three (3) individuals by consulting source lists (e.g., applications or resumes on hand) or conducting other informal solicitation. Consideration must be given to individuals who have previously expressed an interest in the position.

With the exception of extensions or renewals, this class justification must not be used if only one source was considered.

In accordance with FAR 5.102 (a)(5)(iii), the Senior Procurement Executive made a written determination that solicitations for renewals or extensions of a Resident Hire USPSC with the same individual for continuing service at the same mission

do not need to be publicized. Additionally, AIDAR section 705.202 provides contracting officers an exception to publicizing the advance notice of proposed contract action for awards covered by this class J&A. However, the contracting officers, at their discretion, may re-compete a personal services contract, when in the contracting officer's judgment the needs of the Agency would be best served by competition.

B. Contracts with Cooperating Country National or Third Country National PSCs Subject to the Local Compensation Plan.

To satisfy the requirement of soliciting from as many potential offerors as is practicable, COs must publicize the solicitation for a new award locally consistent with Mission/Embassy practice on the announcement of locally-hired CCN positions. With the exception of extensions or renewals, this class J&A must not be used if only one source was considered.

In accordance with FAR 5.102 (a)(5)(iii), the Senior Procurement Executive made a written determination that solicitations for renewals or extensions with the same individual for the same service at the same mission do not need to be publicized. Furthermore, following the Department of State practice, USAID considers CCN PSCs to be of a continuing nature and expects one individual to provide continuous services under a series of sequential contracts. Thus, any extensions or renewals of a CCN or TCN contract subject to Local Compensation Plan may be awarded on a sole source basis. However, the contracting officers, at their discretion, may re-compete a personal services contract, when in the contracting officer's judgment the needs of the Agency would be best served by competition.

C. Local Procurements for Supplies and/or Services up to \$250,000. This applies to procurements where the aggregate amount of the contract does not exceed the limits stated below:

- (i) Local procurements not exceeding the simplified acquisition threshold, as defined in FAR 2.101, were competed as provided in FAR 13.106 except that synopsis in FedBizOpps or display in a public space is not required.
- (ii) Local procurements exceeding the simplified acquisition threshold but not exceeding \$250,000 were publicized locally sufficiently to ensure that a reasonable number of potential offerors were notified. This class J&A may not be used if only one source was considered.

In accordance with FAR 5.102 (a)(5)(iii), the Senior Procurement Executive made a written determination that for all local procurements up to \$250,000 synopsis of

a solicitation in GPE (FedBizOpps) or display in a public space is not required. Additionally, AIDAR section 705.202 provides contracting officers an exception to publicizing the advance notice of proposed contract actions in the GPE.

(2) Market Research.

Following the requirements in FAR Part 10, market research must be conducted for each award executed under the authorities of this class J&A. For overseas purchases of supplies/services the market research will help ensure that a reasonable number of potential offerors were notified of a planned procurement. For PSCs, the market research will determine availability of suitable candidates for a selected category of PSCs. For extensions or renewals the market research will help the contracting officers determine if the needs of the Agency are best served by limited competition or a sole source award.

The contracting officer must document the results of the market research in the contract file, or, if market research was not performed, explain the reasons why market research was not performed.

B. Certification Statement and File Documentation.

Contracting officers must include in the contract file a copy of this class J&A as well as a written statement, signed by the Contracting officer, certifying all of the following:

- (i) the contract is being awarded pursuant to AIDAR 706.302-70(b)(1) or (2), as applicable;
- (ii) the conditions in Section II of this class J&A have been met and the file has been appropriately documented; and
- (iii) the cost of the contract is fair and reasonable.

The Contracting officer must document the award file with any other facts supporting other than full and open competition not included in this class J&A.

Approved:  _____

Mark Walther, Acting Senior Procurement Executive

United States Agency for International Development (USAID)

Date: 12/20/16